



TO: All DWD Unemployment Insurance Staff
Marion County Workforce Investment Board Director
Regional Operators
Directors of Operations for Northern and Southern Indiana
All WorkOne Staff
Policy and Field Operations Staff

FROM: Teresa L. Voors *TLV/JS*
Commissioner, Indiana Department of Workforce Development

THROUGH: Scott B. Sanders, Chief Financial Officer *AS*

DATE: June 13, 2008

SUBJECT: DWD Policy 2007-41
Indiana Department of Workforce Development's Treatment of
Payments Made in Connection with a Layoff or Plant Closure

Purpose

To define and allocate certain income that is deductible from unemployment insurance (UI) benefits pursuant to Indiana Code §22-4-5-1 and §22-4-5-2.

Rescission

DWD Policy 2007-23, dated February 11, 2008

Content

This policy clarifies the Indiana Department of Workforce Development's (DWD) approach to applying Indiana law with respect to defining and allocating certain income received by individuals filing for UI benefits as amended by House Enrolled Act 1219.

General Introduction

Indiana law makes certain income deductible from weekly UI benefit payments. For example, payments made by an employer to an individual who accepts an offer from the employer in connection with a layoff or a plant closure are deductible, but bonus payments are not (IC §22-4-5-1). This policy clarifies how DWD will define and allocate certain income deductions from UI benefits, based on Indiana Code §22-4-5-1 and §22-4-5-2 and case law.

Payments Made in Connection with a Layoff or Plant Closure

The Indiana Code identifies three situations in which a payment is “made in connection with a layoff or plant closure” and treats each situation differently with respect to the deductibility of the payment. See I.C. § 22-4-5-1(a)(12) (herein referred to as “Section (a)(12)” or “§(a)(12)”; IC § 22-4-5-1(a)(13) (herein referred to as “Section (a)(13)” or “§(a)(13)”; and IC § 22-4-5-1(c)(2) (herein referred to as “Section (c)(2)” or “§(c)(2)”).

Definition of Compensation Paid “In Connection with a Layoff or Plant Closure”

By their terms, §§ (a)(12), (a)(13), and (c)(2) all apply to payments made by an employer to an individual “in connection with a layoff or plant closure.” A payment is made in connection with a layoff or plant closure if: 1) the claimant’s position is eliminated as part of a plan whereby the employer intends to close its facility or eliminate a portion of its workforce; and 2) the claimant would not have received the payment but for the layoff or plant closure. Such payments will typically include severance payments, dismissal payments, and separation payments that are negotiated or offered as part of the layoff or plant closure.

If a payment is not made “in connection with a layoff or plant closure” its deductibility is determined pursuant to the remaining sections of IC §§ 22-4-5-1 and 2.

Payments Made by an Employer to an Individual Who Accepts an Offer in Connection with a Layoff or Plant Closure

Sections (a)(12) and (a)(13) apply where a payment is made “by an employer to an individual who accepts an offer from the employer.” A payment will be considered to be “by an employer to an individual who accepts an offer from the employer” if the payments at issue were made pursuant to an agreement that the claimant had the right to accept or reject on an individual basis.

Generally, a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or plant closure is deductible in the week it is paid pursuant to §(a)(12).

Section (a)(13) will apply to a payment made by an employer to an individual who accepts an offer from the employer in connection with a layoff or plant closure if the payment is made pursuant to an agreement that: 1) is in writing; and 2) by its terms, computed the benefit in terms of weeks paid, such that a portion of the payment is explicitly attributed to specific weeks in the future. Under §(a)(13), a payment is deductible in the week to which it is attributable if that week occurs after the payment is received.

Payments Made Under a Valid Negotiated Contract or Agreement

In contrast to §§ (a)(12) and (a)(13), §(c)(2) applies to compensation made “under a valid negotiated contract or agreement.” Compensation is made under a valid negotiated contract or agreement if it is paid pursuant to a contract or agreement that is negotiated on behalf of two or more employees whose positions are eliminated as part of the layoff or plant closure.

Compensation made under a valid negotiated contract or agreement in connection with a layoff or plant closure is not deductible from UI benefit payments, regardless of how the payment is characterized in the contract or agreement (IC §22-4-5-1). This non-deductible compensation includes payments made pursuant to an agreement entered into by a group of two or more employees with the same separating employer.

The following examples illustrate how DWD applies the law related to payments made in connection with a plant closure or layoff. The examples do not address all possible situations.

1. An employer has a policy pursuant to which employees are paid accrued vacation upon termination of employment. The employer closes its facility and employees receive accrued vacation pursuant to this policy. This payment is not paid "in connection with a layoff or plant closure" because the employees would have received it regardless of whether there was a layoff or plant closure. Therefore, the payments are vacation pay that are allocated to the week to which the payments are attributable pursuant to IC § 22-4-5-2(a).
2. An employer has a policy pursuant to which employees are not paid accrued vacation upon termination of employment. The employer closes its facility and offers to pay employees accrued vacation to alleviate the effects of the plant closing. This payment is "in connection with a layoff or plant closure" because the employees received it because of the plant closure. Therefore, the payment is not deductible income.
3. An employer closes its facility and offers its employees a severance package. The employer develops a formula to determine the amount each employee will be offered based on seniority and requires each employee to sign a legal release in exchange for the payment. Each employee is free to accept or reject the package. The payment is made by an employer to an individual who accepts an offer from the employer. Even though the employer offers the same amount or an amount based on a set formula, the employees are free to accept or reject the offer on an individual basis, so § (c)(2) does not apply. Therefore, the payment is deductible only in the week in which it is received.
4. An employer closes its facility and offers its employees a severance package. The employer develops a formula to determine the amount each employee will be offered based on seniority and current salary and requires each employee to sign a legal release in exchange for the payment. The release each employee signs states that the employee has received a lump sum amount and that the amount was calculated by multiplying the employee's years of service by the employee's weekly salary and that amount is intended to cover a period in the future equal to that many weeks' salary. Each employee is free to accept or reject the package. The payment is made by an employer to an individual who accepts an offer from the employer. Even though the employer offers the same amount or an amount based on a set formula, the employees are free to accept or reject the offer on an individual basis, so §(c)(2) does not apply. The claimant has deductible income in the amount of his weekly salary for the number of weeks equal to the number of years of service because the agreement indicates that the payment was intended to cover that number of weeks in the future.

5. An employer closes its facility and offers its employees a severance package. The employer develops a formula to determine the amount each employee will be offered based on seniority and current salary and requires each employee to sign a legal release in exchange for the payment. The release each employee signs states that the employee has received a lump sum amount and that the amount was calculated by multiplying the employee's years of service by \$400. Each employee is free to accept or reject the package. The payment is made by an employer to an individual who accepts an offer from the employer. Even though the employer offers the same amount or an amount based on a set formula, the employees are free to accept or reject the offer on an individual basis, so § (c)(2) does not apply. The claimant would have deductible income in the week the payment was made because the agreement does not indicate that the payment was intended to cover any number of weeks.

Effective Date

The treatment of deductible income set forth in this policy will apply to all initial claims filed after March 14, 2008.

Review Date

September 30, 2010

Ownership

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Effective Date

Immediately

Action

All DWD Unemployment Insurance staff shall follow this policy's instructions in determining certain income payments for Unemployment Insurance benefits purposes. Questions regarding this policy should be addressed to Sarah Dixon.